

FACT SHEET

Americans with Disabilities Act - Title I non-discrimination in the hiring process (Public Law 101-336)

Title I of the ADA prohibits discrimination on the basis of disability in the recruitment and application process, including pre-employment inquiries and testing, etc.

It is advisable that job announcements, advertisements, and other recruitment notices include information on the essential functions of the job. Specific information about essential functions will attract applicants, including individuals with disabilities, who have appropriate qualifications.

Information about job openings should be accessible to people with different disabilities. An employer is not obligated to provide written information in various formats in advance, but should make it available in an accessible format on request.

When an employer uses an employment agency to recruit, screen, and refer potential employees, both the employer and the employment agency may be liable if there is any violation of ADA requirements.

The ADA prohibits any pre-employment inquiries about a disability. This prohibition is necessary to assure that qualified candidates are not screened out because of their disability before their actual ability to do a job is evaluated.

The prohibition on pre-employment inquiries about disability does not prevent an employer from obtaining necessary information regarding an applicant's qualifications, including medical information necessary to assess qualifications and assure health and safety on the job.

The ADA requires only that such inquiries be made in two separate stages of the hiring process.

- 1) Before making a job offer. At this stage, an employer may ask questions about an applicant's ability to perform specific job functions, may not inquire about a disability, and may make a job offer that is conditioned on satisfactory results of a post-offer medical examination or inquiry.
- 2) After making a conditional job offer and before an individual starts work. At this stage, an employer may conduct a medical examination or ask health-related questions, providing that all candidates who receive a conditional job offer in the same job category are required to take the same examination and/or respond to the same inquiries.

What are the basic requirements regarding pre-offer inquiries or interviews?

An employer may not make any pre-employment inquiry about a disability, or about the nature or severity of a disability

- on application forms,
- in job interviews, or
- in background or reference checks.

An employer may not make any medical inquiry or conduct any medical examination prior to making a conditional offer of employment.

An employer may ask job applicants questions about their ability to perform specific job functions, tasks, or duties, as long as these questions are not phrased in terms of a disability. Questions need not be limited to the "essential" functions of the job. Questions may be asked regarding ability to perform all job functions, not merely those that are essential to the job.

An employer may ask all applicants to describe or demonstrate how they will perform a job, with or without an accommodation.

If an individual has a known disability that might interfere with or prevent performance of job functions, she or he may be asked to describe or demonstrate how these functions will be performed, with or without an accommodation, even if other applicants are not asked to do so. However, if a known disability would not interfere with performance of job functions, an individual may only be required to describe or demonstrate how she or he will perform a job if this is required of all applicants for the position.

An employer may condition a job offer on the results of a medical examination or on the responses to medical inquiries if such an examination or inquiry is required of all entering employees in the same job category, regardless of disability. Information obtained from such inquiries or examinations must be handled according to the strict confidentiality requirements of the ADA.

An interviewer may not ask questions about a disability, but may obtain more specific information about the ability to perform job tasks and about any needed accommodation.

Where an applicant has a visible disability (for example, uses a wheelchair or a guide dog, or has a missing limb) or has volunteered information about a disability, the interviewer may not ask questions about

- the nature of the disability,
- the severity of the disability,
- the condition causing the disability,
- any prognosis or expectation regarding the condition or disability, or
- whether the individual will need treatment or special leave because of the disability.

An employer may ask questions to determine whether an applicant can perform specific job functions. The questions should focus on the applicant's ability to perform the job, not on a disability.

The employer may ask, "Are you able to perform these tasks with or without an accommodation?"

If the applicant indicates that she or he can perform the tasks with an accommodation, the employer may ask, "How would you perform the tasks, and with what accommodation(s)?"

However, the employer must keep in mind that it cannot refuse to hire a qualified individual with a disability because of the person's need for an accommodation that would be required by the ADA.

An interviewer may not ask whether an applicant will need or request leave for medical treatment or for other reasons related to a disability.

The interviewer may provide information on the employer's regular work hours, leave policies, and any special attendance needs of the job, and ask if the applicant can meet these requirements (provided that the requirements actually are applied to employees in a particular job).

Information about previous work attendance records may be obtained on the application form, in the interview or in reference checks, but the questions should not refer to illness or disability.

Are there specific limitations on testing in the hiring process?

Employers may use any kind of test to determine job qualifications. The ADA has two major requirements in relation to tests.

- 1) If a test screens out or tends to screen out an individual with a disability or a class of such individuals on the basis of disability, it must be job related and consistent with business necessity. This requirement applies to all kinds of tests, including, but not limited to, aptitude tests, tests of knowledge and skill, intelligence tests, agility tests, and job demonstrations. An employer is only required to show that a test is job-related and consistent with business necessity if it screens out a person with a disability because of the disability. If a person was screened out for a reason unrelated to disability, ADA requirements do not apply.
- 2) The ADA requires that tests be given to people who have impaired sensory, speaking, or manual skills in a format and manner that does not require use of the impaired skill, unless the test is designed to measure that skill. (Sensory skills include the abilities to hear, see, and to process information.) The purpose of this requirement is to assure that tests accurately reflect a person's job skills, aptitudes, or whatever else the test is supposed to measure, rather than the person's impaired skills. However, an employer does not have to provide an alternative test format for a person with an impaired skill if the purpose of the test is to measure that skill.

Are accommodations required in the hiring process?

The employer must provide an accommodation, if needed, to enable an applicant to have an equal opportunity in the interview and testing process. Needed accommodations may include

- an accessible location for people with mobility impairments;
- an English sign language interpreter for a deaf person;
- a reader for a blind person;
- simplifying test language for people who have limited language skills because of a disability;
- scheduling rest breaks for people with mental and other disabilities that require such relief;
- assuring that a test site is accessible to a person with a mobility disability;
- allowing a person with a mental disability who cannot perform well if there are distractions to take a test in a separate room, if a group test setting is not relevant to the job itself;
- where it is not possible to test an individual with a disability in an alternative format, an employer may be required, as a reasonable accommodation, to evaluate the skill or ability being tested through some other means, such as an interview, education, work experience, licenses or certification, or a job demonstration for a trial period;
- substituting a written test for an oral test (or written instructions for oral instructions) for people with impaired speaking or hearing skills;
- administering a test in large print, in Braille, by a reader, or on a computer for people with visual or other reading disabilities;
- allowing people with visual or learning disabilities or who have limited use of their hands to record test answers by tape recorder, dictation or computer; and
- providing extra time to complete a test for people with certain learning disabilities or impaired writing skills.

The above information was summarized and excerpted from the EEOC Technical Assistance Manual on Title I of the ADA, published January 26, 1992.

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ADA-8

January 2000

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